

### **REMARKS**

After Amendment, Claims 1-4, 6, 8, 12 and 21-39 are pending in the application. In this Response, Claim 1 was amended to more clearly claim the present invention, and amendments were made to other claims correct claim dependency or other minor amendments. New Claims 36-39 have been added. No new matter is believed to have been added.

Applicants appreciate the Examiner providing a personal interview on March 15, 2005. Applicants' representative met with Examiner Ghali and provided Examiner Ghali with an embodiment of the currently claimed invention. Claim 1 was discussed, as was the Gilchrist reference. Amendments to the claims were discussed, but no agreement was reached at that time. An Examiner Interview Summary Record was completed.

Applicants wish to point out that this application was lost at the U.S. Patent Office for a significant amount of time and through telephone conversations during the time of reconstruction of the file, Applicants have repeatedly requested a recalculation of the time lost. Applicants herein reiterate that request for the recalculation of the time lost due to loss of the actual file by the Patent Office.

#### **Rejection of Claims 1-4, 6-10, 12, 21-36 under 35 U.S.C. §112, second paragraph**

The Examiner rejected Claims 1-4, 6-10, 12, 21-36 under 35 U.S.C. § 112, second paragraph, as being indefinite because of the recitation of "enriched concentration". Applicants have amended the claims and the terms "enriched concentration" are no longer present. Applicants request the Examiner to withdraw this rejection.

#### **Rejection of Claims 1-4, 6-10, 12, 21-36 under 35 U.S.C. § 103(a)**

The Examiner rejected Claims 1-4, 6-10, 12, 21-36 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,187,290 to Gilchrist, *et al.* (Gilchrist), in view of U.S. Patent No. 5,792,090 to Ladin (Ladin). The Examiner stated "that it would have been obvious to one having ordinary skill in the art at the time of the invention to provide closed cell foam comprising polymer network and polysaccharide with gas entrapped in the foam as disclosed by US '290 and replace the gas by oxygen as disclosed by US '090...." Applicants respectfully traverse this rejection.

Gilchrist's teaching is of a foam made by a foamable carrier when the foamable carrier undergoes a foaming process, and undergoes a noticeably increased volume change and a decreased density from unfoamed to foamed form. The foamable carrier of Gilchrist does not retain its shape before and after the foaming process, thus its form changes during the foaming process. For example, Gilchrist teaches that the "present invention provides a closed container, containing therein a formulation as described above, said container being capable of expelling said formulation in the form of a foam." Gilchrist, Col. 2, lines 47-51. Gilchrist teaches the formation of a foam which is different in shape, density and volume from the starting material, the foamable carrier. "Prior to the foaming process, the foamable carrier is preferably in the form of a gel." Gilchrist, Col. 3, lines 5-6. The foamable carrier itself must be capable of being blown into a foam. The foam that is formed by the foaming process also changes its shape by subsiding due to collapse of the foam structure to form a foam sheet. See Gilchrist, Col. 3, lines 37-43. The foamable material of Gilchrist is in one form, then the shape and structure of the material is altered by the foaming process to another form, a foam, and then when the foam is exposed to air, forms a third form, a collapsed foam.

Gilchrist does not provide a teaching of Applicants' currently claimed invention of a polymeric material that substantially maintains its original shape, its form, before and after formation of a gas within the matrix material. The formation of gas at the sites in the matrix where the catalyst is present does not substantially alter the shape or structure of the formed matrix material, other than slight distension of the polymeric material by the entrapped gas. Thus, Applicants' currently claimed formed matrix is not rendered obvious by the teaching of a foamable carrier that undergoes a foaming process.

The Examiner stated the combination of Ladin is to provide the teaching of a gas being oxygen. The addition of the teaching of Ladin of providing oxygen, does not cure the deficits of the teachings of Gilchrist. Oxygen incorporation, as taught by Ladin, into materials of changing shape and structure as taught by Gilchrist does not provide a teaching of Applicants' currently claimed invention. Applicants request the Examiner to withdraw the rejection.

U.S. Patent Application Serial No. 09/752,939  
Applicant: Gibbins, Bruce L., *et al.*

#### **Fee and Petition for Extension of Time**

Applicants have enclosed a Petition for a three month extension of time and fee (\$510) minus the one month extension of time fee (\$60) previously paid, and authorization to charge the Deposit Account No. 20-1507 for any deficits or overages.

Applicants have also enclosed the fee for filing the Request for Continued Examination (\$395).

#### **Request for Refund of Issue Fee and Publication Fee**

Applicants received the Notice of Withdrawal from Issue under 37 C.F.R. §1.313(b), mailed April 22, 2004. Applicants had timely paid the issue fee and publication fee on April 9, 2003, and then the file was lost by the U.S. Patent and Trademark Office, and no patent issued. Applicants request a refund in the amount of \$980 to be deposited to Deposit Account No. 20-1507.

#### **Conclusion**

The foregoing is a complete response to the Office Action mailed December 16, 2004. Applicants respectfully submit that Claims 1-4, 6, 8, 12 and 21-39 are patentable. Early and favorable consideration is solicited.

No fees other than the fees noted above are believed due; however, the Commissioner is hereby authorized to charge any other fees that may be required, or credit any overpayment, to Deposit Account No. 20-1507.

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If the Examiner believes there are other issues that can be resolved by a telephone interview, or there are any informalities that remain in the application which may be corrected by the Examiner's amendment, a telephone call to the undersigned attorney at (404) 885-3652 is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mary Anthony Merchant', is written over a horizontal line.

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